

ENTERED

June 06, 2019

David J. Bradley, Clerk

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
GALVESTON DIVISION

BOBBY JOE CRAIN,

Plaintiff,

VS.

CHARLES WAGNER, *et al*,

Defendants.

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CIVIL ACTION NO. 3:16-CV-0172

MEMORANDUM OPINION AND ORDER

Plaintiff Bobby Joe Crain, an inmate in the Texas Department of Criminal Justice—Correctional Institutions Division, filed this lawsuit *pro se* alleging that he was denied proper medical care while detained at the Brazoria County Detention Center. On September 14, 2018, the Court dismissed Crain’s civil rights claims and entered final judgment (Dkt. 27, Dkt. 28). On May 15, 2019, Crain filed a motion for reconsideration (Dkt. 33) invoking Federal Rules of Civil Procedure 59(e) and 60(b). Defendant has filed a response (Dkt. 35).

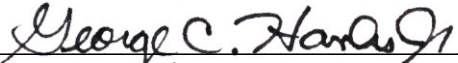
Crain’s motion is not timely under Rule 59(e) because it was filed more than twenty-eight days after judgment was entered. The Court therefore considers the motion under Rule 60(b). *See Demahy v. Schwarz Pharma, Inc.*, 702 F.3d 177, 182 n.2 (5th Cir. 2012). Rule 60(b) is an uncommon means for relief, and “final judgments should not be lightly reopened.” *Lowry Dev., L.L.C. v. Groves & Associates Ins., Inc.*, 690 F.3d 382, 385 (5th Cir. 2012) (internal citation, alteration, and quotation marks omitted). A Rule 60(b) motion may not be used to raise arguments that could have been raised prior to

judgment or to argue new legal theories. *Dial One of the Mid-S., Inc. v. BellSouth Telecommunications, Inc.*, 401 F.3d 603, 607 (5th Cir. 2005). Relief under the broad language of Rule 60(b)(6) is available only if “extraordinary circumstances” are present. *Hesling v. CSX Transp., Inc.*, 396 F.3d 632, 642-43 (5th Cir. 2005).

Plaintiff’s motion does not demonstrate extraordinary circumstances or any basis for relief under the authorities cited above. Therefore, his motion for reconsideration (Dkt. 33) is **DENIED**.

The Clerk will send a copy of this order to the parties.

SIGNED at Galveston, Texas, this 6th day of June, 2019.



George C. Hanks Jr.
United States District Judge